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Desa Tiasa Sdn Bhd v CME Group Bhd & Anor

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(IM)-626–04 OF 2023
AZIZAH NAWAWI, AZIZUL AZMI ADNAN AND CHOO KAH SING JJCA
15 DECEMBER 2025

C

Companies and Corporations — Judicial management — Who may appear during judicial management proceedings — Proposed intervener as unsecured creditor applied to intervene in judicial management proceedings — Whether unsecured creditor may intervene in judicial management proceedings convened under Companies Act 2016 — Companies Act 2016 ss 409 & 616 — Companies (Corporate Rescue Mechanism) Rules 2018 rr 2 & 13 — Courts of Judicature Act 1964 — Rules of Court 2012

D

Bellajade Sdn Bhd ('the proposed intervener') as the unsecured creditor of E CME Group Bhd ('the respondent') had presented a winding-up petition of the respondent but the hearing of the petition could not be proceeded due the application by Desa Tiasa Sdn Bhd ('the appellant') for the respondent to be placed under judicial management. The proposed intervener then filed encl 5 to intervene in the judicial management proceedings. The High Court allowed F encl 5, hence, the present appeal. The issue for the court's determination in the present appeal was whether an unsecured creditor may intervene in judicial management proceedings convened under the Companies Act 2016 ('Act 777').

G **Held**, allowing the appeal, setting aside the order of the High Court, and directing the proposed intervener to pay costs of RM10,000 to the appellant and another RM10,000 to the respondent, subject to allocatur:

(1) Under s 409 of Act 777, a secured creditor had a right to veto the grant of H a judicial management order. Pursuant to s 616 of Act 777, the rules committee constituted under the Courts of Judicature Act 1964 had promulgated the Companies (Corporate Rescue Mechanism) Rules 2018 ('the CRM Rules'), which among others specified the applicable procedures for an application for a judicial management order. Rule 2 of I the CRM Rules provided that the procedures in the Rules of Court 2012 ('the ROC 2012') applied where there were no specific procedures prescribed under the CRM Rules (see paras 9–10).

(2) The provisions of the CRM Rules made it clear as to the identity of persons who may appear at a hearing of an application for a judicial

management order. Hence, r 2 of the CRM Rules ousted the application of the general principles for intervention found in the ROC 2012. The operative provision in this respect was r 13 of the CRM Rules. Rule 13 did not permit unsecured creditors from participating in the judicial management proceedings. Since the proposed intervener was an unsecured creditor, it was precluded by the proper operation of r 13 from intervening the application for a judicial management order (see paras 11–14).

(3) The court was of the view that the High Court in *Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd* [2020] MLJU 723 was wrong in holding that r 13 of the CRM Rules was ultra vires Act 777. It was an established principle of statutory construction that provisions of written law must be read harmoniously in order to resolve any apparent conflict between different provisions of statute. In the present case, the parent Act contained no provision that prohibited an unsecured creditor from attending a hearing for a judicial management order. That provision was contained in r 13, in the CRM Rules. There was thus no conflict at all — for the very reason that Act 777 did not expressly provide to the contrary. It was trite that the role of the court was to interpret the law. Where the plain words of written law were clear, effect must be given to them. If r 13 was thought not to provide for the desired result, then it would be for the Legislature and the rules committee to promulgate laws and rules that would give effect to that intent (see paras 16–18).

[Bahasa Malaysia summary

Bellajade Sdn Bhd ('pencelah yang dicadangkan') sebagai pemiutang tanpa cagaran CME Group Bhd ('responden') telah mengemukakan petisyen penggulungan responden tetapi pendengaran petisyen tersebut tidak dapat diteruskan disebabkan oleh permohonan oleh Desa Tiasa Sdn Bhd ('perayu') agar responden diletakkan di bawah pengurusan kehakiman. Pencelah yang dicadangkan kemudiannya memfailkan lampiran 5 untuk mencelah dalam prosiding pengurusan kehakiman tersebut. Mahkamah Tinggi membenarkan lampiran 5, justeru, rayuan semasa. Isu yang perlu diputuskan oleh mahkamah dalam rayuan semasa ialah sama ada pemiutang tanpa cagaran boleh mencelah dalam prosiding pengurusan kehakiman yang diadakan di bawah Akta Syarikat 2016 ('Akta 777').

Diputuskan, membenarkan rayuan, mengenepikan perintah Mahkamah Tinggi, dan mengarahkan pencelah yang dicadangkan untuk membayar kos sebanyak RM10,000 kepada perayu dan RM10,000 lagi kepada responden, tertakluk kepada alokatur:

(1) Di bawah s 409 Akta 777, pemiutang bercagar mempunyai hak untuk memveto pemberian perintah pengurusan kehakiman. Menurut s 616 Akta 777, jawatankuasa kaedah-kaedah yang ditubuhkan di bawah Akta

Mahkamah Kehakiman 1964 telah mengisytiharkan Kaedah-Kaedah Syarikat (Mekanisme Penyelamat Korporat) 2018 ('Kaedah-Kaedah MPK'), yang antara lain menyatakan prosedur yang berkenaan untuk permohonan perintah pengurusan kehakiman. Kaedah 2 Kaedah-Kaedah MPK memperuntukkan bahawa prosedur dalam Kaedah-Kaedah Mahkamah 2012 ('KKM 2012') terpakai jika tiada prosedur khusus yang ditetapkan di bawah Kaedah-Kaedah MPK (lihat perenggan 9–10).

(2) Peruntukan Kaedah-Kaedah MPK menjelaskan identiti orang yang boleh hadir pada pendengaran permohonan untuk perintah pengurusan kehakiman. Oleh itu, k 2 Kaedah-Kaedah MPK telah membatalkan penggunaan prinsip umum untuk mencelah yang terdapat dalam KKM 2012. Peruntukan yang beroperasi dalam hal ini ialah k 13 Kaedah-Kaedah MPK. Kaedah 13 tidak membenarkan pemiutang tanpa cagaran daripada menyertai prosiding pengurusan kehakiman. Memandangkan pencelah yang dicadangkan adalah pemiutang tanpa cagaran, ia dihalang oleh pengoperasian k 13 yang betul daripada mencelah permohonan untuk perintah pengurusan kehakiman (lihat perenggan 11–14).

(3) Mahkamah berpendapat bahawa Mahkamah Tinggi dalam kes *Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd* [2020] MLJU 723 adalah salah dalam memutuskan bahawa k 13 Kaedah-Kaedah MPK adalah ultra vires Akta 777. Ia merupakan prinsip yang mantap dalam pembinaan statutori bahawa peruntukan undang-undang bertulis harus dibaca secara harmoni untuk menyelesaikan apa-apa konflik yang jelas antara peruntukan statut yang berbeza. Dalam kes semasa, Akta induk tidak mengandungi apa-apa peruntukan yang melarang pemiutang tanpa cagaran daripada menghadiri perbicaraan untuk perintah pengurusan kehakiman. Peruntukan berkenaan terkandung dalam k 13, dalam Kaedah-Kaedah MPK. Oleh itu, tiada konflik langsung — atas sebab Akta 777 tidak secara nyata memperuntukkan sebaliknya. Adalah jelas bahawa peranan mahkamah adalah untuk mentafsir undang-undang. Jika perkataan-perkataan undang-undang bertulis yang nyata adalah jelas, kesannya harus diberikan. Jika k 13 dianggap tidak memberikan hasil yang diingini, maka adalah menjadi tanggungjawab badan perundangan dan jawatankuasa kaedah-kaedah untuk mengisytiharkan undang-undang dan kaedah-kaedah yang boleh memenuhi niat yang dimaksudkan (lihat perenggan 16–18).]

Cases referred to

Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd [2020] MLJU 723, HC (overd)

Maybank Investment Bank v Million Westlink (Civil Appeal No B-02 (IM)-1590–08 of 2019) (unreported), CA (refd)

Legislation referred to

Companies (Corporate Rescue Mechanism) Rules 2018 rr 2, 13
Companies Act 2016 ss 409, 616
Courts of Judicature Act 1964
Rules of Court 2012

Appeal from: Originating Summons No BA-28JM-6–08 of 2022 (High Court, Shah Alam)

Malik Imtiaz Sarwar (with Jamie Wong, Kelvesh Deshenraj and Wong Ming Yen) (Jamie Wong) for the appellant.
S Raven (with Janice Tay) (S Ravenesan) for the first respondent.
Michele Kaur (with Tee Yee Man) (Sun & Michele) for the second respondent.

Azizul Azmi Adnan JCA:

INTRODUCTION

[1] The crisp issue for determination in this appeal was whether an unsecured creditor may intervene in judicial management proceedings convened under the Companies Act 2016. We ruled that it may not.

MATERIAL BACKGROUND FACTS

[2] In 2014, the proposed intervener, Bellajade Sdn Bhd, commenced a writ action against the respondent CME Group Bhd to recover arrears under a tenancy agreement. After protracted litigation, Bellajade's claim was eventually allowed in part in September 2021, with the Federal Court directing CME Group Bhd to pay RM6,364,256.85 rental arrears to Bellajade, as well as rental for the period January 2014 to the middle of December 2015.

[3] In April 2022, Bellajade and another creditor of CME Group Bhd presented a petition for the winding-up of CME Group Bhd.

[4] On 8 August 2022 the first respondent, Desa Tiasa Sdn Bhd, made an application for CME Group Bhd to be placed under judicial management. According to the affidavit affirmed in support of the application for judicial management, Desa Tiasa has invested some RM2m in CME Group Bhd. As a result of the application for judicial management, the hearing of Bellajade's petition for winding up, which was scheduled on 16 August 2022, could not proceed.

THE INTERVENTION APPLICATION

[5] On 12 September 2022 Bellajade applied in encl 5 to intervene in the judicial management proceedings. The principal basis of the intervention was the judgment debt that was owed to it by CME Group Bhd. Bellajade was concerned that decisions made in the judicial management proceedings would seriously prejudice its rights to the judgment debt, which so far remained unsatisfied.

[6] Bellajade's application was allowed. The material portion of the grounds of judgment of the High Court recorded its reasoning as follows:

> FINDINGS OF THIS COURT
>
> [4] In answer to the above issue, I am of the considered view that the Proposed Intervener being an unsecured creditor is entitled in law to be given leave to intervene and be heard in the present judicial management proceedings.
>
> [5] The Court of Appeal decision delivered on 21 July 2020 in the case of *Maybank Investment Bank Bhd & Others v Million Westlink Sdn Bhd* (Civil Appeal No B-02 (IM)-1590–08 of 2019) held that unsecured creditors is allowed to intervene in an application for a judicial management order. I am certainly bound by that decision.
>
> [6] Hence, based on the above decision, the proposed intervener must be given leave to intervene and be added as a party in the present judicial management application. It is pertinent to preserve their interest and right, which will very likely be affected or prejudiced by any decision made in the judicial management proceedings.

[7] Enclosure 5 was thus allowed with costs in the cause.

THIS APPEAL

[8] It is common ground that Bellajade is an unsecured creditor.

[9] Under the Companies Act 2016, a secured creditor has a right to veto the grant of a judicial management order. Section 409 of the Act provides as follows:

> 409 Dismissal of application for judicial management order
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> Subject to subsection 405(5), the Court shall dismiss an application for a judicial management order if it is satisfied that —
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> (a) a receiver or receiver and manager referred to in subparagraph 408(1)(b)(ii) has been or will be appointed; or
>
> (b) the making of the order is opposed by a secured creditor.

[10] Pursuant to s 616 of the Companies Act 2016, the rules committee

constituted under the Courts of Judicature Act 1964 has promulgated the Companies (Corporate Rescue Mechanism) Rules 2018 ('the CRM Rules'), which among others specify the applicable procedures for an application for a judicial management order. Rule 2 of the CRM Rules provide that the procedures in the Rules of Court 2012 apply where there are no specific procedures prescribed under the CRM Rules:

> 2 Application of Rules of Court 2012
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> Where there is no specific procedure provided in these Rules in respect of a voluntary arrangement or judicial management, the procedure provided in the Rules of Courts 2012 [P.U. (A) 205/2012] shall apply.

[11] In our considered view, the provisions of the CRM Rules make it clear as to the identity of persons who may appear at a hearing of an application for a judicial management order. Hence r 2 of the CRM Rules ousts the application of the general principles for intervention found in the Rules of Court 2012.

[12] The operative provision in this respect is r 13 of the CRM Rules, which bears reproduction in full:

> 13 Notice of intention to appear
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> (1) Only the following person may appear at the hearing of an application for a judicial management order to oppose the application —
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> (a) any person who has appointed or is or may be entitled to appoint a receiver or receiver and manager under subparagraph 408(1)(b)(ii) of the Act; or
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> (b) any secured creditor referred to in paragraph 409(b) of the Act.
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> (2) The person referred to in subrule (1) who intends to appear at the hearing of an application for a judicial management order shall serve the notice of intention to appear on the applicant or his solicitor.
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> (3) The notice of intention to appear referred to in subrule (2) shall —
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> (a) be made in Form 10 of the First Schedule; and
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> (b) be served, either personally or by post, not later than twelve noon of the day preceding the hearing date of the application for a judicial management order.
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> (4) Any person referred to in subrule (1) who fails to comply with this rule shall not, without leave of the Court, be allowed to appear at the hearing of the application for a judicial management order.

[13] In our considered view, r 13 of the CRM Rules clearly provides that only two categories of person may appear at the hearing of an application for a

judicial management order to oppose the application: first, a person who has appointed or is or may be entitled to appoint a receiver or receiver and manager (ie a debentureholder), and second, a secured creditor. Rule 13 does not permit unsecured creditors from participating in the proceedings.

[14] Since Bellajade is an unsecured creditor, it is precluded by the proper operation of r 13 from intervening the application for a judicial management order.

[15] Learned counsel for Bellajade placed reliance on the decision of the Court of Appeal in *Maybank Investment Bank v Million Westlink* (Civil Appeal No B-02 (IM)-1590–08 of 2019) (unreported) where the proposed interveners' appeal was allowed. However, no grounds of judgment were issued in that case, and hence we cannot ascertain its ratio decidendi. Consequently, we do not consider it to be an authority binding on this court.

[16] Reference was also made to the High Court case of *Goldpage Assets Sdn Bhd v Unique Mix Sdn Bhd* [2020] MLJU 723, in which unsecured creditors were permitted to intervene in judicial management proceedings. In that case, the High Court in not so many words held that r 13 of the CRM Rules was ultra vires the Companies Act 2016. That this was so is evident from the following passage of the High Court judgment:

> [38] I am of the view that r 13, and in fact the entire Companies (Corporate Rescue Mechanism) Rules 2018) has to be read in conjunction with the parent act ie, the Companies Act 2016, and that as the Companies Act does not prohibit any creditor from being heard at the JM and/or to oppose the JM, and based on my reasonings above on the right of any creditor to be heard, I hold that the Companies (Corporate Rescue Mechanism) Rules 2018 being a subsidiary legislation cannot contravene the parent Act ie, the CA 2016 and thus the interveners may be heard in the JM application including to oppose the said JM. Authority for this can be found in s 23 of the Interpretation Act 1948 and 1967 which reads '(1) Any subsidiary legislation that is inconsistent with an Act (including the Act under which the subsidiary legislation was made) shall be void to the extent of the inconsistency'. See also the Federal Court case of *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2002] 2 MLJ 385; [2002] 2 CLJ 413.

[17] We are of the respectful view that the High Court was wrong to so hold. It is an established principle of statutory construction that provisions of written law must be read harmoniously in order to resolve any apparent conflict between different provisions of statute. In this case, the parent Act contains no provision that prohibits an unsecured creditor from attending a hearing for a judicial management order. That provision is contained in r 13, in the CRM Rules. There is thus no conflict at all — for the very reason that the Companies Act 2016 does not expressly provide to the contrary.

[18] It is trite that the role of the court is to interpret the law. Where the plain words of written law are clear, effect must be given to them. If r 13 is thought not to provide for the desired result, then it would be for the Legislature and the rules committee to promulgate laws and rules that would give effect to that intent.

[19] For the reasons explained here, we allowed the appeal and set aside the order of the High Court. We directed Bellajade to pay costs of RM10,000 to the appellant and another RM10,000 to CME Group Bhd, with such costs to be subject to an allocatur.

Appeal allowed; order of High Court set aside; proposed intervener directed to pay costs of RM10,000 to appellant and another RM10,000 to respondent, subject to allocatur.

Reported by Dzulqarnain Ab Fatar